Counterplan Text: The USFG should give all mentally ill criminals the option of going to a Mental Health Court designed specifically for rehabilitative treatment.

It’s mutually exclusive. The Plan forces the mentally ill to participate in treatment. This was checked in CX.

The net benefit is **the constitution**.

Coercive mental health treatment violates the Constitution. **Jackson 2**[[1]](#footnote-1)

**The right of a patient to refuse treatment is based** up**on five constitutional protections** [1]**:**

**- the 8th amendment’s protection against cruel and unusual punishment**

**- the 1st  amendment’s protection of free speech (freedom of thought** / ideas**)**

**- the 1st amendment’s protection of freedom of religion**

**-  the** more **broadly interpreted right to privacy**

**- the 14th amendment**’s protection of liberty (the **right to be free from unjustified intrusions on personal security**).

Within medicine, these constitutional guarantees have generally been unchallenged in the case of physical (somatic) illness.  In fact, these protections constitute a *competent* individual’s right to accept or refuse an intervention, based upon the principles of patient autonomy and informed consent.   Within psychiatry, however, these guarantees have been variably interpreted and restrained.   First, the state has been permitted a range of activities under its police authority, in which the rights of the public have superceded  the  rights of the mentally ill [2].   Second, the state has been permitted a range of activities under the doctrine of *parens patriae*  -- the 14th century theory which established the legitimacy of the state to act as guardian for those unable to care for themselves [3]. **Given the steady rise of involuntary treatment** decisions with**in the U**nited **S**tates (e.g, more than forty states now authorizing coerced outpatient care),  **and** the **apparent acceptance of this phenomenon** culturally**, it is essential that mental health professionals reexamine** the **assumptions** being **made within the legal and psychiatric communities.**

Constitutionality is key to credibility – violating the constitution proves that we’re not trustworthy. Tom **Ginsburg 06** writes[[2]](#footnote-2)

Why might these issues of constitutional design vary across countries? I draw on the literature that treats constitutions as mechanisms for making political precommitments.56 A precommitment means “becoming committed, bound or obligated to some course of action or inaction or to some constraint on future action . . . to influence someone else’s choices.”57 Imagine a constitution written by a single political leader, seeking to establish legitimate authority. The politician can promise to behave in particular ways, for example, not to interfere with the rights of his or her citizens. But there is no reason for citizens to believe mere promises from their leader. A promise at Time 1 only has value if the promisee believes that it will be obeyed at Time 2. **The politician** thus **faces the problem of making** the **promise[s] credible.** This problem is particularly acute when the politician cannot predict the incentives he or she will face in the future.58 If costs and benefits vary in unpredictable ways, the politician’s promise to behave in the specified way may be less believable. To paraphrase Stephen Holmes, why should people believe their leader when sober, knowing that sometimes leaders can become drunk and behave quite differently?59 Facing this problem, a rational constitutional designer might realize that it makes sense to limit her own power, in order to obtain the consent of those she governs. **Democratic constitutions** can **help to serve this role.** As Sunstein has written: “Democratic constitutions operate as ‘precommitment strategies’ in which nations, aware of problems that are likely to arise, take steps to ensure that those problems will not arise or that they will produce minimal damage if they do.”60 **Constitutions help make** the **promises credible by imposing costs on those who violate promises.**61 **By tying their own hands, politicians actually** can **enhance their own authority.**

Two impacts.

(a) International credibility solves multiple scenarios for extinction.

**Nye and Armitage 07**[[3]](#footnote-3)

Soft power is the ability to attract people to our side without coercion. Legitimacy is central to soft power. **If a** people or **nation believes American objectives to be legitimate, we are more likely to persuade them to follow our lead** without using threats and bribes. **Legitimacy can also reduce opposition to**—and the costs of—**using hard power when the situation demands.** Appealing to others’ values, interests, and preferences can, in certain circumstances, replace the dependence on carrots and sticks. Cooperation is always a matter of degree, and it is profoundly influenced by attraction…The information age has heightened political consciousness, but also made political groupings less cohesive. Small, adaptable, transnational networks have access to tools of destruction that are increasingly cheap, easy to conceal, and more readily available. Although the integration of the global economy has brought tremendous benefits, **threats such as pandemic disease and the collapse of financial markets are more distributed and more likely to arise without warning. The threat of** widespread physical harm to the planet posed by **nuclear catastrophe** has existed for half a century, though the realization of the threat **will become more likely as the number of nuclear weapons states increases.** The potential security challenges posed by **climate change raise[s]** the possibility of an entirely **new** set of **threats** for the United States **to consider**… **States** and non-state actors who improve their ability to draw in allies will gain competitive advantages in today’s environment. Those **who alienate potential friends will stand at greater risk.** China has invested in its soft power to ensure access to resources and to ensure against efforts to undermine its military modernization. **Terrorists depend on** their ability to attract **support from the crowd** at least as much as their ability to destroy the enemy’s will to fight.

(b) Domestic credibility is key to solve crime. **Tyler 04**[[4]](#footnote-4)

One way to approach the relationship between the police and the public is to consider how **the public impacts** on **the effectiveness of the police in their efforts to combat crime** and maintain social order. Traditional discussions of the effective exercise of legal authority have focused on the ability of legal authorities to shape the behavior of the people within the communities they police. **The ability of the police** to secure compliance with their directives and with the law more generally-the ability **to be authoritative-is** widely identified as **one key indicator of their viability** as authorities (Easton1 975;Fuller 1971).**To be effective** as maintainers of social order, in other words, **the police must be widely obeyed** (Tyler 1990). This obedience must occur **both during personal encounters** between police officers and members of the public (Tyler and Huo 2002) **and in people's** everyday **law-related behavior** (Tyler 1990).

Appealing to the constitutive rules of the agent is the only way to derive an “ought” from an “is”. **Searle 64** writes[[5]](#footnote-5)

This summary of **the** traditional **empirical view** has been very brief, but I hope it conveys something of the power of this picture. In the hands of certain modern authors, especially Hare and Nowell-Smith, the picture attains considerable subtlety and sophistication. What is wrong with this picture? No doubt many things are wrong with it. In the end I am going to say that one of the things wrong with it is that it fails to give us any coherent account of such notions as commitment, responsibility, and obligation. In order to work toward this conclusion I can begin by saying that the picture **fails to account for the different types of “descriptive” statements.** Its paradigms of descriptive statements are such utterances as “my car goes eighty miles an hour,” “Jones is six feet tall,” “Smith has brown hair,” and the like. But it is forced by its own rigidity to construe “Jones got married,” “Smith made a promise,” “Jackson has five dollars,” and “Brown hit a home run” as descriptive statements as well. It is so forced, because **whether or not someone** got married, **made a promise**, has five dollars, **or hit a home run is** as much **a matter of objective fact** as whether he has red hair or brown eyes. **Yet** the former kind of statement (statements containing “married,” “promise,” and so forth) seem to be quite different from the simple empirical paradigms of descriptive statements. How are they different? Though both kinds of statements state matters of objective fact, the **statements containing words such as** “married,” **“promise,” “home run,” and “five dollars” state facts whose existence presupposes certain institutions: a man has five dollars, given the institution of money. Take away the institution and all he has is** a **rectangular** bit of **paper with green ink** on it. A man hits a home run only given the institution of baseball; without the institution he only hits a sphere with a stick. Similarly, a man gets married or makes a promise only within the institutions of marriage and promising. Without them, all he does is utter words or makes gestures. We might characterize such facts as institutional facts, and contrast them with noninstitutional, or brute, facts: that a man has a bit of paper with green ink on it is a brute fact, that he has five dollars is an institutional fact.6 The classical picture fails to account for the differences between statements of brute fact and statements of institutional fact. The word “institution” sounds artificial here, so let us ask: what sorts of institutions are these? In order to answer that question I need to distinguish between two different kinds of rules or conventions. Some rules regulate antecedently existing forms of behavior. For example, the rules of polite table behavior regulate eating, but eating exists independently of these rules. Some **rules**, on the other hand, **do not merely regulate but** create or **define new forms of behavior: the rules of chess, for example, do not merely regulat**e an antecedently existing activity called playing **chess; the**y, as it were, **create the possibility of** or define **that activity.** The activity of playing chess is constituted by action in accordance with these rules. Chess has no existence apart from these rules. The distinction I am trying to make was foreshadowed by Kant’s distinction between regulative and constitutive principles, so let us adopt his terminology and describe our distinction as a distinction between regulative and constitutive rules. Regulative rules regulate activities whose existence is independent of the rules; constitutive rules constitute (and also regulate) forms of activity whose existence is logically dependent on the rules. Now the institutions that I have been talking about are systems of constitutive rules. The institutions of marriage, money, and promising are like the institutions of baseball or chess in that they are systems of such constitutive rules or conventions. What I have called institutional facts are facts which presuppose such institutions. Once we recognize the existence of and begin to grasp the nature of such institutional facts, it is but a short step to see that many forms of **obligations**, commitments, rights, and responsibilities **are similarly institutionalized.** It is often a matter of fact that one has certain obligations, commitments, rights, and responsibilities, but it is a matter of institutional, not brute, fact. It is **one such** institutionalized form of **obligation, promising,** which **I invoke**d above **to derive an “ought” from an “is.”** I started with a brute fact, that a man uttered certain words, and then invoked the institution in such a way as to generate institutional facts by which we arrived at the institutional fact that the man ought to pay another man five dollars. **The whole proof rests on** an appeal to **the constitutive rule that** to make **a promise is** to undertake **an obligation.** We are now in a position to see how we can generate an indefinite number of such proofs. Consider the following vastly different example. We are in our half of the seventh inning and I have a big lead off second base. The pitcher whirls, fires to the shortstop covering, and I am tagged out a good ten feet down the line. The umpire shouts, “Out!” I, however, being a positivist, hold my ground. **The umpire tells me to return to the dugout. I point out to him that you can't derive an “ought” from an “is.”** No set of descriptive statements describing matters of fact, I say, will entail any evaluative statements to the effect that I should or ought to leave the field. “You just can't get orders or recommendations from facts alone.” What is needed is an evaluative major premise. I therefore return to and stay on second base (until I am carried off the field). **I think everyone feels my claim**s here **to be preposterous**, and preposterous in the sense of logically absurd. Of course you can derive an “ought” from an “is,” and though to actually set out the derivation in this case would be vastly more complicated than in the case of promising, it is in principle no different. **By undertaking to play baseball I have committed** myself **to** the observation of **certain constitutive rules.** We are now also in a position to see that the tautology that one ought to keep one's promises is only one of a class of similar tautologies concerning institutionalized forms of obligation. For example, “one ought not to steal” can be taken as saying that to recognize something as someone else's property necessarily involves recognizing his right to dispose of it. This is a constitutive rule of the institution of private property. One ought not to tell lies” can be taken as saying that to make an assertion necessarily involves undertaking an obligation to speak truthfully. Another constitutive rule. “One ought to pay one’s debts” can be construed as saying that to recognize something as a debt is necessarily to recognize an obligation to pay it. It is easy to see how all these principles will generate counterexamples to the thesis that you cannot derive an “ought” from an “is.” My tentative conclusions, then, are as follows: 1. **The classical picture fails to account for** institutional facts. 2. Institutional facts exist within **systems of constitutive rules.** 3. Some systems of constitutive rules involve obligations, commitments, and responsibilities. 4. **Within those systems we can derive “ought’s” from “is’s”** on the model of the first derivation.

The constitution is the constitutive rule of all government agents. **Madison et al** write[[6]](#footnote-6)

**This Constitution**, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land;** and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The **Senators and Representatives** before mentioned, and the Members of the several State Legislatures, **and all executive and judicial Officers, both of the U**nited **S**tates **and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;** but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. Article 7. The **Ratification** of the Conventions **of nine States, shall be sufficient for the Establishment of this Constitution** between the States so ratifying the Same. **[This was] Done in Convention by the Unanimous Consent of the States present** the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names.

1. “The Right to Refuse Treatment,” Grace Jackson, MD. 2002. http://psychrights.org/articles/rightorefuse.htm [↑](#footnote-ref-1)
2. Tom Ginsburg (Professor of Law and Political Science, University of Illinois, Urbana-

   Champaign). “LOCKING IN DEMOCRACY: CONSTITUTIONS, COMMITMENT, AND INTERNATIONAL LAW.” 2006. <http://works.bepress.com/tom_ginsburg/12/> [↑](#footnote-ref-2)
3. Joseph Nye (University Distinguished Service Professor at Harvard University, and previous dean of Harvard University's John F. Kennedy School of Government) and Richard Armitage (13th United States Deputy Secretary of State, the second-in-command at the State Department, serving from 2001 to 2005), “CSIS Reports – A Smarter, More Secure America”, 11/6, 2007 <http://www.csis.org/component/option,com_csis_pubs/task,view/id,4156/type,1/> [↑](#footnote-ref-3)
4. Professor Of Psychology at New York University. Enhancing Police Legitimacy Tom R. Tyler *Annals of the American Academy of Political and Social Science* , Vol. 593, To Better Serve and Protect: Improving Police Practices (May, 2004), pp. 84-99 [↑](#footnote-ref-4)
5. Searle, John (Professor of Philosophy at UC Berkeley). “How to Derive an ‘Ought’ From an ‘Is’.” The Philosophical Review Vol. 73, No. 1, January 1964. <http://commonsenseatheism.com/wp-content/uploads/2010/03/Searle-How-to-Derive-Ought-from-Is.pdf> [↑](#footnote-ref-5)
6. John Dickinson, Gouverneur Morris, Thomas Jefferson, John Adams, Thomas Paine, Edmund Randolph, James Madison, Roger Sherman, James Wilson, and George Wythe (Founding Fathers). Constitution. 1787. [↑](#footnote-ref-6)